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February 10, 2017

William Blasini  
American Recycling International Inc  
dba LKQ Pick Your Part  
2315 Carpenter Road  
Oceanside CA 92058

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Corporate Creations Network Inc  
1430 Truxton Ave 5<sup>th</sup> FL  
Bakersfield CA 93301

American Recycling International Inc  
dba LKQ Pick Your Part  
2931 E. White Star Ave  
Anaheim CA 92806

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter  
Pick Your Part Violations of General Industrial Permit**

Dear Mr. Blasini:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding American Recycling International Inc dba LKQ Pick Your Part Oceanside ("Pick Your Part Owners and/or Operators") violations of the State Water Resources Control Board Water Quality Order Nos. 97-03-DWQ and 2014-0057-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (Industrial Permit).<sup>1</sup> This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and Industrial Permit for Pick Your Part (formerly Ecology Auto Parts), located at 2315 Carpenter Road, Oceanside CA 92058 ("Facility" or "Pick Your Part"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Pick Your Part's Clean Water Act violations and CERF's intent to sue.

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<sup>1</sup> The Industrial Permit amendments, pursuant to Order No. 2014-0057-DWQ, become effective July 1, 2015. All references are to the Industrial Permit prior to modification pursuant to Order No. 2014-0057-DWQ are to the "Industrial Permit." All references to the Permit as modified by Order No. 2014-0057-DWQ are to the "New Industrial Permit."



**I. Coastal Environmental Rights Foundation (CERF)**

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from Pick Your Part's ongoing illegal activities are discharged into the San Luis Rey River, downstream to the Pacific Ocean.

The public and members of CERF use San Luis Rey River and the Pacific Ocean to fish, sail, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the Pick Your Part Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by Pick Your Part Owners and/or Operators' failure to comply with the Clean Water Act and the New Industrial Permit.

**II. Storm Water Pollution and the Industrial Permit**

**A. Duty to Comply**

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Industrial Permit in order to lawfully discharge. Pick Your Part enrolled as a discharger subject to the New Industrial Permit on July 29, 2015 with WDID No. 9 371025964. Ecology Auto Parts, Pick Your Part's predecessor, was enrolled under the Industrial Permit prior from 2005 to July 2015.

Pursuant to the Industrial Permit, a facility operator must comply with all conditions of the Industrial Permit. Failure to comply with the Industrial Permit is a Clean Water Act violation. (Industrial Permit, § C.1; New Industrial Permit §XXI.A. ["Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code..."]). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a Industrial Permit renewal application. (*Id.*). As an enrollee, Pick Your Part has a duty to comply with the Industrial Permit and is subject to all of the provisions therein.

**B. The Pick Your Part Facility Discharges Contaminated Storm Water in Violation of the Industrial Permit**

Discharge Prohibition A(2) of the Industrial Permit and Section III.C. of the New Industrial Permit prohibit storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. In addition, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards, such as the CTR or applicable Basin Plan water quality standards. (See New Industrial Permit, §III.D.;



§VI.A.). "The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard." (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of such a standard, including the CTR.'" (*Id.* at 927).

If a discharger violates Water Quality Standards, the Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards.(Industrial Permit, Fact Sheet p. viii; New Industrial Permit, §XX.B.1; 33 U.S.C. § 1311(b)(1)(C)). The Pick Your Part Owners and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising the Pick Your Part SWPPP pursuant to section New Industrial Permit Section XX.B.

The monitoring data for the Pick Your Part Facility indicates consistent, ongoing exceedances and violations of the Industrial Permit. The Pick Your Part Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of the above listed prohibitions and limitations during every significant rain event. Pick Your Part's sampling data reflects numerous discharge violations. Pick Your Part's own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

As reflected below, the Facility has exceeded the CTR and benchmarks during every significant rain event. The iron concentration in the Facility's discharge has reached over **63 times** the Basin Plan objective for iron and over **13 times** the CTR limit for copper.

No.	Date	Parameter	Units	Result	Benchmark/ WQO	NAL
1	1/19/17	TSS	mg/L	104	-	100
2	1/19/17	Iron	mg/L	3.25	0.3 <sup>1</sup>	1.0
3	1/19/17	Aluminum	mg/L	2.29	.75 <sup>3</sup>	.75
4	1/09/17	Oil & Grease	mg/L	23.2	-	15
5	1/09/17	TSS	mg/L	482	-	100
6	1/09/17	Iron	mg/L	19.1	0.3 <sup>1</sup>	1.0
7	1/09/17	Zinc	mg/L	.82	.12 <sup>2</sup>	.26
8	1/09/17	Copper	mg/L	.172	.013 <sup>2</sup>	.0332
9	1/09/17	Aluminum	mg/L	12.3	.75 <sup>3</sup>	.75
10	1/09/17	Lead	mg/L	.12	.065 <sup>2</sup>	.262
11	12/16/16	Iron	mg/L	1.07	0.3 <sup>1</sup>	1.0
12	12/16/16	Zinc	mg/L	.161	.12 <sup>2</sup>	.26
13	12/16/16	Copper	mg/L	.0747	.013 <sup>2</sup>	.0332
14	12/16/16	Aluminum	mg/L	.704	.75 <sup>3</sup>	.75
15	11/27/16	TSS	mg/L	118	-	100
16	11/27/16	Iron	mg/L	.744	0.3 <sup>1</sup>	1.0



17	11/27/16	Zinc	mg/L	.245	.12 <sup>2</sup>	.26
18	11/27/16	Copper	mg/L	.0974	.013 <sup>2</sup>	.0332
19	11/27/16	Aluminum	mg/L	2.33	.75 <sup>3</sup>	.75
20	5/7/16	Iron	mg/L	1.4	0.3 <sup>1</sup>	1.0
21	5/7/16	Zinc	mg/L	.162	.12 <sup>2</sup>	.26
22	5/7/16	Copper	mg/L	.107	.013 <sup>2</sup>	.0332
23	5/7/16	Aluminum	mg/L	.924	.75 <sup>3</sup>	.75

<sup>1</sup> Basin Plan Objective for San Luis Rey, Basin Plan Table 3-2

<sup>2</sup> California Toxics Rule Limit

<sup>3</sup> EPA Multi Sector General Permit Benchmark, Table 8.M-1

Every day Pick Your Part Owners and/or Operators discharged or continue to discharge polluted storm water in violation of the Discharge Prohibitions and Receiving Water Limitations of the New Industrial Permit is a separate and distinct violation of the Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Pick Your Part Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since Pick Your Part's enrollment. These violations are ongoing and will continue each day contaminated storm water is discharged in violation of the requirements of the Permit.

**C. Failure to Develop and/or Implement BMPs that Achieve Compliance with Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology**

The New Industrial Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of the Best Available Technology Economically Achievable (BAT) for toxic pollutants<sup>2</sup> and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants.<sup>3</sup> Specifically, the Permit "requires control of pollutant discharges using BAT and BCT to reduce and prevent discharges of pollutants, and any more stringent effluent limitations necessary for receiving waters to meet applicable water quality standards." (New Industrial Permit, §I.D.32; see also, §V.A.).

EPA Benchmarks are the pollutant concentrations which generally indicate whether a facility has successfully developed or implemented BMPs that meet the BAT/BCT. Discharges with pollutant concentration levels above EPA Benchmarks and/or the CTR demonstrate that a facility has failed to develop and/or implement BMPs that achieve compliance with BAT for toxic pollutants and BCT for conventional pollutants. The Facility's monitoring data demonstrates consistent exceedances of not only the CTR, but also EPA benchmarks. (See monitoring data above and Ecology's historical monitoring data).<sup>4</sup>

<sup>2</sup> Toxic pollutants are found at 40 CFR § 401.15 and include, but are not limited to: lead, nickel, zinc, silver, selenium, copper, and chromium.

<sup>3</sup> Conventional pollutants are listed at 40 CFR § 401.16 and include biological oxygen demand, total suspended solids, pH, fecal coliform, and oil and grease.

<sup>4</sup> For example, Ecology's November 29, 2013 monitoring data showed exceedances of lead water quality objectives and benchmark exceedances for iron, aluminum, TSS, and specific conductance.



Thus, Pick Your Part (and Ecology's) storm water discharge sampling data demonstrates the Facility has not developed and/or implemented BMPs that meet the standards of BAT/BCT. (See *Baykeeper, supra*, 619 F.Supp. 2d at 925 ["Repeated and/or significant exceedances of the Benchmark limitations should be relevant" to the determination of meeting BAT/BCT]).

Further, information available to CERF indicates Pick Your Part has failed to implement and/or develop BMPs that meet BAT and BCT. As noted in the Facility's SWPPP, minimal, ineffective advanced BMPs are used at the Facility. (SWPPP, pp. 9-12). Notably, no filtration devices are installed to address the Facility's discharge of metals and oil and grease. (*Id.*).

Notably, Permit Effluent Limitation V.A. is a separate requirement, independent of the iterative process triggered by exceedances of the Permit's NALs. "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives." (New Industrial Permit, §I.M.63). Thus, the NALs do not represent technology-based criteria relevant to determine whether an industrial facility has implemented BMPs that achieve BAT/BCT. Therefore, development of an Exceedance Response Action Plan pursuant to Permit Section XII neither addresses nor alleviates the aforementioned violations of Effluent Limitation V.A.

In summary, the Pick Your Part Owners and/or Operators are seriously in violation of Section V.A. of the Industrial Permit. Every day Pick Your Part operates with inadequately developed and/or implemented BMPs in violation of the BAT/BCT requirements is a separate and distinct violation of the Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311 (a)). Therefore, Pick Your Part has been in daily and continuous violation of the BAT/BCT requirements of the New Industrial Permit every day since at least July 29, 2015, and is subject to penalties for all such violations.

These violations are ongoing and Pick Your Part will continue to be in violation every day it fails to develop and/or implement BMPs that achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity in storm water discharges at the Facility.

#### **D. Inadequate Storm Water Pollution Prevention Plan**

One of the main requirements of the Industrial Permit (and New Industrial Permit) is the Storm Water Pollution Prevention Plan (SWPPP). (Industrial Permit §A; New Industrial Permit, Finding I.54, §X). Pick Your Part has not developed an adequate SWPPP as required by the New Industrial Permit.

The Pick Your Part SWPPP dated June 12, 2015 fails to adequately assess the Facility's potential contribution of 303(d) listed pollutants to receiving waters. Per section X.G.2.a.ix of the New Industrial Permit, the Pick Your Part Owners and/or Operators are required to assess the potential industrial pollutant sources to receiving waters with 303(d) listed impairments identified in Appendix 3. (New Industrial Permit, §X.G.2.a.ix). The lower reach of San Luis Rey River is listed as impaired on the 2012 Integrated Report for numerous constituents, including: chloride, enterococcus, fecal coliform, phosphorus, total dissolved solids, total nitrogen, and toxicity. Though the SWPPP identifies the numerous pollutants for which San Luis Rey is listed, it summarily dismisses the potential of such pollutants onsite "through knowledge of processes." (SWPPP, p. 8). This is completely inadequate – especially because the EPA fact sheet for



sector M, automobile salvage yards, identifies phosphorous as a common pollutant associated with vehicle equipment, and parts washing areas.<sup>5</sup>

The Facility has also historically discharged contaminated storm water containing copper and zinc at levels which exceed the NALs (and CTR for metals). The SWPPP fails to include these constituents as part of the Facility's monitoring protocol or mention the historic exceedances, in violation of the New Industrial Permit. (New Industrial Permit, §XI.B.6.c.; see SWPPP, p. 16, Table 4).

Indeed, the Facility's SWPPP is virtually identical to the Ecology Auto Wrecking SWPPP. (Ecology SWPPP, dated June 18, 2015). In light of Ecology's numerous exceedances of water quality objectives for monitoring data showed exceedances of lead water quality objectives and benchmark exceedances for iron, aluminum, TSS, and specific conductance, Pick Your Part's wholesale implementation and plagiarism of Ecology's SWPPP virtually ensured the Facility's continued failure to protect water quality and comply with the New Industrial Permit.

Further, the SWPPP identifies Veronica Chavez as the only person on the pollution prevention team. (SWPPP, p. 4). However, the New Industrial Permit requires identification of "team members assigned to conduct the monitoring requirements." (New Industrial Permit, §X.I.1.). Pick Your Part has failed to identify Ms. Chavez, or anyone else, as the team member responsible for conducting monitoring.

The Facility site map also fails to meet the requirements of the New Industrial Permit. Adopted wholesale from Ecology, the map fails to include the sampling locations<sup>6</sup>, identify San Luis Rey as the adjacent receiving water, and identify locations where materials are exposed to precipitation, areas of industrial activity subject to the Permit, including storage areas, shipping and receiving areas, vehicle (non-used vehicles) and equipment storage and maintenance areas, or material handling and processing areas. (New Industrial Permit §X.E.3a.-f.).

Lastly, despite the numerous and egregious water quality violations established by Pick Your Part's monitoring data, the SWPPP BMPs have not been updated to address such exceedances.

Every day the Pick Your Part Owners and/or Operators operate the Facility without an adequate SWPPP constitutes a separate and distinct violation of the Industrial Permit, the New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Pick Your Part Owners and/or Operators have been in daily and continuous violation of the Industrial Permit since at least June 12, 2015. These violations are ongoing and the Pick Your Part Owners and/or Operators will continue to be in violation every day they fail to address the SWPPP inadequacies. Thus, the Pick Your Part Owners and/or Operators are liable for civil penalties of up to \$37,500 per day for violations prior to November 2, 2015, and \$51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1).

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<sup>5</sup> [https://www.epa.gov/sites/production/files/2015-10/documents/sector\\_m\\_autosalvage.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/sector_m_autosalvage.pdf)

<sup>6</sup> In fact, the map identifies "run-on sampling points" for which the Facility does not conduct sampling. (SWPPP, Fig. 2).



**E. Failure to Monitor**

The Pick Your Part Owners and/or Operators have failed to sample as required during the 2015-2016 wet season. Only one rain event was monitored, though there were numerous qualifying rain events. (See Exhibit A, 2015-2016 Precipitation Data).

The New Industrial Permit requires dischargers to take two samples between July 1 and December 31 and two samples between January 1 and June 30. (New Industrial Permit, §XI.B.2). Indeed, the Pick Your Part SWPPP, dated July 20, 2015 (revised 1/27/2017), specifically acknowledges the "sampling frequency was increased to require two (2) sampling events within the first half of each reporting year (July 1 to December 31) and two (2) sampling events within the second half of each reporting year (January 1 to June 30)..." (SWPPP, p. 1). The SWPPP also states the Facility "has prepared a site-specific storm water monitoring program for this facility to maintain compliance with the [New Industrial Permit]." (SWPPP, p. 16). Nonetheless, Pick Your Part has failed to comply with these requirements.

Pick Your Part has also failed to sample for COD. Pick Your Part's SWPPP indicates COD is a constituent of concern at the site, triggering the requirement to continue monitoring under the New Industrial Permit. (SWPPP, p. 8). Pick Your Part's failure to do so is an additional violation of the New Industrial Permit. (New Industrial Permit, §XI.B.6.c.).

Lastly, despite its numerous exceedances of the copper and zinc water quality objectives and NALS, Pick Your Part failed to sample for these constituents during its last sampling event (January 19, 2017). Pick Your Part's failure to monitor for copper and zinc constitutes a violation of the Permit. (New Industrial Permit, §XI.B.6.c.).

Every day the Pick Your Part. Owners and/or Operators failed to adequately monitor the Facility is a separate and distinct violation of the Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These violations are ongoing and the Pick Your Part Owners and/or Operators will continue to be in violation every day they fail to adequately monitor the Facility. The Pick Your Part Owners and/or Operators are thus subject to penalties in accordance with the Industrial Permit – punishable by a minimum of \$37,500 per day of violations prior to November 2, 2015, and \$51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1).

**F. Falsification of Reports**

Section XVI. of the New Industrial Permit requires dischargers to submit Annual Reports by July 15<sup>th</sup> following each reporting year. The Annual Report must include a completed compliance checklist that indicates whether a discharger has complied with and addressed all applicable requirements of the Permit. (New Industrial Permit, §XVI.B.1.). The Permit contains numerous additional provisions which ensure the accuracy of reported information. For example, Section XXI.J. requires dischargers take samples and measurements that are "representative of the monitored activity." Further, the Legally Responsible Person or Duly Authorized Representative must certify all documents submitted via SMARTS. (New Industrial Permit, §XXI.K.1.). Any person signing, certifying, or submitting such documents does so under penalty of perjury. (New Industrial Permit, §XXI.L.).

Both the New Industrial Permit and the Clean Water Act make it unlawful to falsify



reports, punishable by a \$10,000 fine or by imprisonment, or both. (New Industrial Permit, §XXI.N; 33 U.S.C. §1319(c)(1)). In addition to knowing falsification, negligent violation of the Clean Water Act is also punishable through criminal penalties. (33 U.S.C. §1319(c)(1)).

The 2015-2016 Annual Report for the Facility, certified under penalty of perjury by Pick Your Part Plant Manager Veronica Chavez, contains false information. In Attachment 1, as justification for Pick Your Part's failure to conduct visual observations of all sampling events and sample the required number of qualifying storm events, Ms. Chavez stated Pick Your Part was "unaware of the requirement will do so going forward" and "unaware of the requirement until we took storm water training" respectively. This is false.

In its July 26, 2015 Notice of Termination, prior owner Ecology Auto Wrecking certified that it had "notified the new owner/operator of the storm water NPDES permit requirements" and listed American Recycling's William Blasini as the point of contact for Pick Your Part. Further, the Facility's July 20, 2015 SWPPP explicitly details the requirement to sample four qualifying storm events per year in numerous locations. (SWPPP, pp. 1 and 16). Ms. Chavez's claim of ignorance is therefore factually incorrect. It also does not constitute a legal defense for failure to comply with the Permit requirements. (*U.S. v. Weitzenhoff* (9th Cir. 1993) 35 F.3d 1275, 1284 ["criminal sanctions are to be imposed on an individual who knowingly engages in conduct that results in a permit violation, regardless of whether the polluter is cognizant of the requirements or even the existence of the permit"] emphasis added; *U.S. v. Sinskey* (8th Cir. 1997) 119 F.3d 712, 715-16 ["Given this interpretation of the statute, the government was not required to prove that Sinskey knew that his acts violated either the CWA or the NPDES permit, but merely that he was aware of the conduct that resulted in the permit's violation."])).

Therefore, Pick Your Part and Ms. Chavez are in violation of the Permit and Clean Water Act Section 309.

Every day the Pick Your Part Owners and/or Operators fail to submit an accurate Annual Report for the Facility is a separate and distinct violation of the New Industrial Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311(a)). Pick Your Part has been in daily and continuous violation of the New Industrial Permit's reporting requirements every day since at least July 13, 2016. These violations are ongoing and the Pick Your Part Owners and/or Operators, as well as Ms. Chavez, will continue to be in violation every day they fail to revise and submit an accurate 2015-2016 Annual Report.

#### **G. Inadequate Level 1 ERA Report**

The Pick Your Part Level 1 ERA Report, dated December 7, 2016, is woefully inadequate. As a preliminary matter, the Report only mentions the Facility's NAL exceedances for aluminum and iron. (Level 1 ERA Report, p. 2). However, the Facility has exceeded NALs for copper as well. (May 6, 2016 Monitoring Report). The Report fails to address these exceedances in its evaluation or SWPPP revisions and additional BMPs. Pick Your Part has therefore failed to comply with New Industrial Permit Sections XII.A-C.

Notably, the other LKQ Pick Your Part facilities within Region 9 all failed to sample as required (only sampling once or twice), all had NAL exceedances for metals, and all prepared



similarly deficient Level 1 ERA Reports (prepared by the same QISP).<sup>7</sup> None of the Level 1 ERA Reports require filtration or other advanced BMPs. Rather, they rely on increased housekeeping and berms which fail to adequately address metal particulates and NAL exceedances. This Facility's Level 1 ERA Report mentions a "storm water treatment system" but simply suggests cleaning, sandblasting, and repainting of the chambers. (Level 1 ERA Report, p. 2). It is unclear what this treatment system is comprised of, much less how such remedial measures will improve the system's efficiency in addressing the pollutants of concern. Further, the Level 1 ERA Report BMPs are clearly ineffective as NAL exceedances persist. (See Table above).

Every day the Pick Your Part Owners and/or Operators fail to submit an adequate Level 1 ERA Report is a separate and distinct violation of the New Industrial Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311(a)). These violations are ongoing and the Pick Your Part Owners and/or Operators will continue to be in violation every day they fail to revise and submit an appropriate Level 1 ERA Report.

#### **H. Unauthorized Non-Storm Water Discharges**

Except as authorized by Section IV of the New Industrial Permit, permittees are prohibited from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. (New Industrial Permit, §III.B.; IV.A-B).

Information available to CERF indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, unauthorized non-storm water discharges occur from the Facility's irrigation, washing and cleaning activities. (See, SWPPP, p. 11). The Pick Your Part Owners and/or Operators conduct these activities without BMPs to prevent related non-storm water discharges. Non-storm water discharges resulting from washing and cleaning are not from sources that are listed among the authorized non-storm water discharges in Section IV.A. of the Permit. Further, the San Diego Regional Municipal Separate Storm Sewer System (MS4) Permit Section E.2.a. prohibits the discharge of unauthorized non-storm water as an illicit discharge. (See also, Oceanside Municipal Code §40.2.2).

These discharge violations are ongoing and will continue until the Pick Your Part Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtain separate NPDES permit coverage. Each time the Pick Your Part Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition III.B. of the Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). CERF will update the number and dates of violations when additional information becomes available. The Pick Your Part Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since July 29, 2015.

#### **III. Remedies**

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period,

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<sup>7</sup> See ERA Report for facilities at 800 Energy Way, Chula Vista, 825 Energy Way, Chula Vista, 850 Energy Way, Chula Vista, and 2315 Carpenter Road Oceanside.



however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

Pick Your Part must develop and implement a SWPPP which complies with all elements required in the New Industrial Permit, and address the consistent, numerous, and ongoing water quality violations at the Facility. Should the Pick Your Part Owners and/or Operators fail to do so, CERF will file an action against Pick Your Part for its prior, current, and anticipated violations of the Clean Water Act.

CERF's action will seek all remedies available under the Clean Water Act §1365(a)(d). CERF will seek the maximum penalty available under the law which is \$37,500 per day of violations prior to November 2, 2015, and \$51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1). CERF may further seek a court order to prevent Pick Your Part from discharging pollutants. Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

#### **IV. Conclusion**

CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

**Marco A. Gonzalez**  
**COAST LAW GROUP LLP**  
**1140 S. Coast Highway 101**  
**Encinitas, CA 92024**  
**Tel: (760) 942-8505 x 102**  
**Fax: (760) 942-8515**  
**Email: marco@coastlawgroup.com**

CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

**COAST LAW GROUP LLP**

  
**Marco A. Gonzalez**

  
**Livia Borak Beaudin**

Attorneys for  
Coastal Environmental Rights Foundation

cc:



**Notice of Intent to Sue: Clean Water Act**  
***Pick Your Part***  
**February 10, 2017**  
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<b>Alexis Strauss</b> <b>Acting Regional Administrator</b> <b>U.S. EPA, Region 9</b> <b>75 Hawthorne Street</b> <b>San Francisco, CA, 94105</b>	<b>Dave Gibson, Executive Officer</b> <b>Catherine Hagan, Staff Counsel</b> <b>San Diego Regional Water Quality Control Board</b> <b>2375 Northside Drive, Suite 100</b> <b>San Diego, CA 92108-2700</b>
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**EXHIBIT A**



2015-2016 Precipitation Data

STATION	STATION_NAME	ELEVATION	LATITUDE	LONGITUDE	DATE	PRCP
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20150915	1.14
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20160106	1.01
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20160105	0.95
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20151005	0.61
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20160306	0.5
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20160307	0.45
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20150719	0.43
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20160107	0.36
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20150718	0.33
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20151211	0.25
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20160507	0.24
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20151222	0.23
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20160506	0.23
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20160410	0.19
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20151219	0.18
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20160131	0.18
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20160311	0.18
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20160407	0.17
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20151126	0.15
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20151127	0.14
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20151102	0.12
GHCND:USW00053121	OCEANSIDE MUNICIPAL AIRPORT CA US	8.5	33.21944	-117.34944	20160218	0.1